

CITY OF NEWTON

ZONING BOARD OF APPEALS

INSTRUCTIONS FOR FORM OF PETITION FOR VARIANCE

Form Approved by the Zoning Board of Appeals September 22, 2009

Prior to filing an application, you must discuss your proposed project with a Building Official in the Inspectional Services Department. If your project needs a building permit and does not meet the requirements of the City of Newton Zoning Ordinances, your building permit application will be denied, signed by the Building Official and the section of the ordinance and type of relief required (special permit from the Board of Aldermen or variance from the Zoning Board of Appeals) will be listed.

General Laws Chapter 40A, Sec. 10 allow a zoning board of appeals to grant a variance from certain zoning requirements if a substantial hardship exists relating to soil conditions, shape or topography of land or structures especially affecting the property which do not affect generally the zoning district in which the property is located.

A variance, if granted, must be recorded by the applicant at his expense at the Middlesex South Registry of Deeds in order to take effect. Rights authorized by a variance must be exercised within one year of the date of grant or else these rights will expire.

A petition for a variance will not be considered unless it contains all of the following information:

- Name and address of property owner, together with daytime contact information including email address if available. The petition must be signed by the property owner and dated.
- Specify whether or not petitioner consents to access to the property by board members for viewing in connection with the hearing.
- Address of the property for which the variance is sought, if different from the owner's address. Please provide date of acquisition and name of prior owner. If the applicant is different from the owner, please state the nature of the relationship between the applicant and owner (i.e., attorney, executor, etc.)
- Zoning district in which property is located.
- Specific variance or variances requested with reference to the applicable provisions of the ordinance. For example: "Applicant requests a 3.2 foot variance from the side yard setback requirements of the Newton Rev. Ordinances Section 30-15, Table One for an old (pre-1953) lot."
- Title documents if seeking to establish that the property is an "old" pre-1953 lot.
- A narrative account of the specific facts and circumstances of the substantial hardship relating to soil conditions, shape or topography of land or structures especially affecting the property which do not affect generally the zoning district in which the property is located. No variance can be granted without the Board finding a substantial hardship attributable to one of the reasons in the preceding sentence.

- An explanation why the relief sought will not create substantial detriment to the public good, and will not nullify or derogate from the intent or purpose of the zoning ordinance.
- A description of the character of the neighborhood (pictures may be helpful in this regard).
- If relevant, please indicate whether the owner has the ability or opportunity to acquire abutting property, or if abutting property is also owned by the applicant.
- To the extent possible, provide the names of all principals and beneficial interest owner of the property prior to the hearing in order to allow members with a conflict of interest or the appearance of a conflict of interest to timely recuse themselves.
- For variance requests for existing violations include specific facts and circumstances regarding when the violation occurred, who owned the property at that time, the name of any contractor or developer involved in the construction of the noncomplying structure.
- A draft decision and an electronic copy (see attached model decision).

The original petition must be filed with the City Clerk and copies of the petition to the Zoning Board including the date and time of filing as certified by the City Clerk's office shall be filed with the Clerk of the Board in the Inspectional Services Department, at City Hall, together with a filing fee of \$500.00 payable to the City of Newton. The Clerk reserves the right to refuse to accept petitions which are incomplete or which contain misleading or incorrect information. Fifteen (15) copies of the petition must be filed with the Clerk of the Board, typewritten on 8-1/2"x11" paper, and accompanied by the required plans (see attached information sheet).

If the Clerk determines that a petition is incomplete or misleading, the petitioner must supply all requested additional materials prior to the deadline for advertising the hearing. If the petitioner does not submit requested additional materials prior to this date, petitioners additional materials may not be given full consideration by the Board or the hearing may be delayed. Petitioners are therefore advised to submit all materials supporting their petition at the time of initial filing, including pictures, petitions signed by neighbors, and any other information the petitioner feels the Board may find relevant in making its decision.

It is essential that every petition for a variance be supported by complete statements setting forth in full detail all the facts and contentions relied on by the applicant. It should be noted especially that the Board will consider only those variances for which a specific request is made. In other words, the Board cannot grant a variance from the rear yard setback requirements if the applicant has only requested a variance from the side yard setback requirements.

In most instances, a decision on the variance is made the night of the hearing. Counsel for the Board will review the draft decision provided by the applicant, and any conditions required by the Board will be added. The final decision will be signed by the Chair of that night's hearing and the Clerk of the Board. The decision must be filed in the office of the City Clerk within 100 days of the date of filing of the original application. Applicants and abutters will receive notice that the decision has been filed with the City Clerk. After 20 days have passed (without the filing of an appeal), the applicant may pick up a certified copy of the decision from the City Clerk and record this at the Registry of Deeds. No building permit will be issued for the work permitted by the variance unless the applicant brings a copy of the recorded decision when applying for the building permit.

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INSTRUCTIONS FOR REQUIRED PLANS

The rules of the Board provide that there shall be filed with every petition for a variance fifteen (15) legible copies of the following plans:

PLAN OF LAND

The plan of land of the property that is the subject of the petition for a variance must be:

1. Prepared by a Registered Engineer or Land Surveyor and may be
 - a) A certified copy of the plan of land of the property as recorded at the Registry of Deeds (a mortgage plot plan will not suffice), or
 - b) if a newly created lot, then an ANR Plan or a Definitive Subdivision Plan with applicable Planning Board approvals or certifications.
2. Drawn to a scale of either 1 inch = 20 feet or 1 inch = 40 feet
3. Approved as to form and content by the Inspectional Services Department.

AREA PLAN

In order to adequately show the character of the surrounding area, within 300 feet of subject property, an area plan for the lot in question shall be filed. As near as may be, the subject lot shall be in the approximate center of the plan. The plan shall be drawn to a scale of 1 inch = 40 feet.

The plan shall include the following:

1. All street names, street lines and house numbers for the entire area.
2. Section, block and lot numbers, as shown on the City of Newton Assessor's Plans, areas and boundaries, with dimensions.
3. City of Newton sewer and drain easements.
4. In the case of lots located in Flood Plain/Watershed areas, all flood plain elevations, watershed distances and all brooks, streams, wetlands and ponds.

PLOT PLAN

The plot plan, also referred to as a site plan, is the plan that shows the structures on the subject property and must comply with the following:

1. It shall be drawn to scale of 1 inch = 20 feet.

2. The plan shall include lot area, frontage, grade plane, basement/first floor calculations, building height, stories, lot coverage, and open space percentage, and if applicable; lot area/unit, floor area ratio and build factor.
3. The plan shall show the following:
 - a) The exterior shape of existing structures, proposed structures, alterations or additions to existing structures, together with front, rear, and side yard dimensions, driveways, paved areas, and all off-street parking spaces, existing and proposed.
 - b) The zoning district of the lot in question and surrounding lots.
 - c) In case of variances involving setback, the proposed distances from side, front, and rear lot lines must be shown.
 - d) If the area is one of steep terrain (10% or more), the topography must be shown in two-foot contour intervals.
 - e) If the variance is sought on soil conditions or other physical condition of the land, the location and character of this condition must be shown on the plan.
4. The plan shall include petitioner's name, date of plan and the name of the person drawing the plan.
5. The plan shall be prepared and stamped by a Registered Engineer or Land Surveyor.

ARCHITECTURAL PLANS

1. The plans shall be drawn to a scale of $\frac{1}{4}$ inch = 1 foot on $8\frac{1}{2}$ x 11 or 11 x 17 paper.
2. The plans shall consist of existing and proposed floor plans, and elevations of all sides.
3. The plans shall have a title block containing the date, applicant's name and address, the name and address of the person who prepared the plans, and the location of the property involved in the petition.
4. If drawn by an architect, the architect shall stamp the plans.

ALL PLANS

Copies of all plans shall be either $8\frac{1}{2}$ x 11 or 11 x 17 inches.